



DEPARTMENT OF THE ARMY

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REPLY TO
ATTENTION OF

ATZP-JA

1 May 2004

MEMORANDUM FOR ALL

SUBJECT: The Lautenberg Amendment

1. Purpose: To provide information on the Department of Defense Policy concerning the Lautenberg Amendment.
2. Facts. The Lautenberg Amendment amended the Gun Control Act of 1968 (18 U.S.C. § 922) and made it a felony for any person convicted of a misdemeanor crime of domestic violence to ship, transport, possess, or receive firearms or ammunition. It is also a felony to transfer or sell firearm or ammunition to any person with a misdemeanor crime of domestic violence. As of May 2002, there were 44 reported cases of soldiers (all enlisted) in the active Army who have triggered the prohibition of the Lautenberg Amendment.
3. Definition. UP 27 CFR 178.11, a "misdemeanor crime of domestic violence" consists of a Federal, State or local offense that:
 - a. Is a misdemeanor under Federal or State law or, in States that do not classify offenses as misdemeanors, is an offense punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine.
 - b. Has, as an element, the use or attempted use of physical force (e.g., assault and battery), or the threatened use of a deadly weapon; and
 - c. Was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, (e.g., the equivalent of a "common law" marriage even if such relationship is not recognized under the law), or a person similarly situated to a spouse, parent, or guardian of the victim (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home would be similarly situated to a spouse).
4. A soldier shall not be considered to have been convicted of a misdemeanor crime of domestic violence unless:
 - d. The soldier is considered to have been convicted by the jurisdiction in which the proceedings were held;
 - e. The soldier was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
 - f. If a soldier was entitled to a jury trial, the soldier was tried by a jury, or knowingly and intelligently waived that right.

5. Not a Qualifying Conviction. A soldier shall not be considered to have been convicted of a misdemeanor crime of domestic violence if it was the result of receiving a summary court-martial conviction or receiving non-judicial punishment under Article 15, UCMJ.

6. The Felony Anomaly. The Lautenberg Amendment created an anomaly within the military that those having been convicted of misdemeanor crimes of domestic violence were limited in their ability to ship, transport, possess, and receive firearms and ammunition, but those convicted of the more serious crimes of domestic violence (generally felonies) were not. The legislative history of the Lautenberg Amendment does not explain why this anomaly was created.

7. DOD Interim Guidance. DOD issued the interim policy for implementation of the Lautenberg Amendment on 22 October 1997.[1] It required commanders to implement steps to determine whether military personnel within their command had a qualifying conviction for misdemeanor crimes of domestic violence committed after 30 September 1996. Military personnel with a qualifying conviction may be discharged or separated if the basis for discharge or separation exists under applicable existing regulations and directives. Commanders and supervisors were required, however, to grant service members reasonable time prior to separation to obtain expungement or pardons or to gather information to determine whether they have a qualifying conviction. The 22 October 1997 DOD guidance also included a form (DD Form 2760, Qualification to Possess Firearms or Ammunition) that allowed each soldier to certify that he or she has not been convicted of a misdemeanor crime of domestic violence committed after 30 September 1996. The Army elected not to use that form because of unresolved legal issues.

8. DA Messages.

a. In 1998, the Army issued an interim implementing message.

b. In 1999, the Army issued guidance on deployment eligibility, assignment, and reporting of soldiers affected by the Lautenberg Amendment.[2] Presently, soldiers with Lautenberg Amendment convictions are barred from reenlistment, and are reported as non-deployable on the unit status report (USR).

c. In May 2002, the Army issued a follow-up message.[3] The four components of the May 2002 message consisted of:

1. Reemphasized identification and reporting requirements. Because of on-going public concerns of domestic violence in the military community, this message has, by policy, extended the reporting requirements to “restraining orders.”

2. Required installation commanders and supporting Staff Judge Advocates to establish Memorandums of Agreement (MOAs) with local law enforcement and civil courts to ensure tracking of off-post arrests that lead to qualifying convictions. Most installations have existing MOAs with local law enforcement/civil courts for the purpose of dividing prosecutorial responsibilities. These MOAs normally do not address the need for the chain of command to be notified when a soldier is convicted of a misdemeanor crime of domestic violence. This requirement can be fulfilled by amending the existing MOAs with local law enforcement/civil courts.

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3. Required commanders to add Lautenberg Amendment to their list of annual training requirements and

4. Re-emphasized USR reporting requirements for soldiers affected by the Lautenberg Amendment.

9. Pending DOD Guidance. Final DOD Lautenberg Implementation Guidance is expected in the near future. The expected changes will likely include

- a. A new self-certification form;
- b. A continuing self-reporting requirement for soldiers who receive a qualifying conviction;
- c. Extending, by DOD policy, the prohibition against shipment, transportation, possession, knowing transfer, or receipt of firearms or ammunition by soldiers convicted of a felony crime of domestic violence.
- d. Authority to administratively separate individuals for violation of the Lautenberg Amendment instead of requiring that a basis for discharge or separation exists under some other applicable existing regulation and directive.